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THE HONORABLE BRIAN D. LYNCH
CHAPTER 13
LOCATION: Tacoma, WA

**IN THE UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF WASHINGTON AT TACOMA**

In Re:)
STEPHEN JON CAREAGA and) NO. 17-42850-BDL
LISA ANN CAREAGA,)
Debtor.)
STEPHEN JON CAREAGA and)
LISA ANN CAREAGA,) Adv. Proc. No.
Plaintiff,) ADVERSARY COMPLAINT SEEKING
vs.) TO AVOID LIEN
THE BANK OF NEW YORK MELLON,)
Defendant.)

Plaintiffs allege:

1.

This adversary proceeding arises out of the Plaintiffs' Chapter 13 case now pending before this Court bearing case number 17-42850-BDL. This Court has jurisdiction to consider the matters herein, pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506 and 1322. This is a core proceeding under 28 U.S.C. § 157 (b) (2) (A), (B), (K), and (O).

2.

Plaintiffs reside in Gig Harbor, Washington.

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ADVERSARY COMPLAINT SEEKING TO AVOID LIEN – 1

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2 3.

3 Defendant The Bank of New York Mellon is a banking entity utilizing Specialized
4 Loan Servicing as servicer of Debtors' mortgage obligation. Defendant The Bank of New
5 York Mellon is owed money and is holder of Debtor's mortgage obligation.

6 4.

7 Plaintiffs are the owners and residents of a parcel of real estate located in Pierce
8 County, Washington, commonly described as 7235 North Creek Loop, Gig Harbor, Pierce
9 County, Washington, 98335 legally described as:

10 LOT 13, THE ESTATES OF GIG HARBOR, #2003033150003 PIERCE
11 COUNTY WASHINGTON

12 APN: 40022000130

13 5.

14 Prior to filing of the bankruptcy case, Plaintiffs executed a Deed of Trust in favor of
15 the Defendant, or Defendant's predecessor, evidencing a loan by the Defendant or
16 Defendant's predecessor. Such Deed of Trust was recorded against Plaintiff's residence in
17 Pierce County, Washington real estate records. On the date of filing of Plaintiff's Chapter
18 13 Petition (July 27, 2017), Plaintiffs were indebted to Defendant under such instrument in
19 the sum of approximately \$253,200.25 per Defendant's Proof of Claim.

20 6.

21 On the date of filing of Plaintiff's Chapter 13 Petition, the value of Plaintiff's real
22 property referenced above was \$630,000 per Plaintiff's Schedule A. On that date, the debt
23 owing to senior lienholder, Nationstar Mortgage, totaled \$679,157.79. Unavoidable liens
24 senior to Defendant's total \$679,157.79.

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ADVERSARY COMPLAINT SEEKING TO AVOID LIEN - 2

1 7.

2 No equity in Plaintiff's real property exists to which Defendant's lien can attach.
3 Therefore, pursuant to 11 U.S.C. §§ 506 and 1322, and *In Re Zimmer*, 313 F.3d 1220 (9th Cir.
4 2002), Plaintiff is entitled to "strip off" the lien held by Defendant so that such lien becomes
5 voided and no longer remains a lien against Plaintiff's real property.

6 WHEREFORE, Plaintiff prays for judgment voiding Defendant's lien against her
7 residential real property to be effective upon completion of their Chapter 13 plan, for
8 allowance of a general unsecured claim to Defendant in the amount of \$253,200.25, and for
9 such other and further relief as this Court might deem just and equitable.

10 Respectfully submitted this 20th day of December, 2017.

11 /s/ Kathleen Shoemaker
12 JAMES F. DART, WSBA #16168
KATHLEEN V. SHOEMAKER, WSBA #27358
Attorneys for Debtors/Plaintiffs

13 PLAINTIFF'S CERTIFICATION

14 I, Stephen J. Careaga, Plaintiff in this matter, have read the foregoing Complaint and
15 hereby certify to the best of my knowledge and ability under penalty of perjury that the
16 facts contained therein are true and accurate.

17 SWORN to this 26th day of December, 2017 at Gig Harbor, Washington.

18 /s/ Stephen Careaga
19 Stephen J. Careaga, Plaintiff/Debtor

20 I, Lisa A. Careaga, Plaintiff in this matter, have read the foregoing Complaint and hereby
21 certify to the best of my knowledge and ability under penalty of perjury that the facts
22 contained therein are true and accurate.

23 SWORN to this 26th day of December, 2017 at Gig Harbor, Washington.

24 /s/ Lisa Careaga
25 Lisa A. Careaga, Plaintiff/Debtor

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ADVERSARY COMPLAINT SEEKING TO AVOID LIEN – 3